

1 MARGARET A. MCLETCHIE, Nevada Bar No. 10931
 2 PIETER M. O'LEARY, Nevada Bar No. 15297
 3 LEO S. WOLPERT, Nevada Bar No. 12658
4 MCLETCHIE LAW
 5 602 South Tenth St.
 6 Las Vegas, Nevada 89101
 Telephone: (702) 728-5300; Fax: (702) 425-8220
 Email: maggie@nvlitigation.com
Counsel for Plaintiff Nebyou Solomon

7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9 NEBYOU SOLOMON, an individual,

Case. No.: 2:19-cv-00652-CDS-DJA

10 Plaintiff,
 11 vs.

**PLAINTIFF'S REPLY IN
 SUPPORT OF MOTION TO RE-
 TAX COSTS**

12 LAS VEGAS METROPOLITAN POLICE
 13 DEPARTMENT; JOSEPH LOMBARDO,
 individually and in his official capacity as Sheriff;
 JOHN L. PELLETIER, an individual; RICHARD
 14 E. MAUPIN, an individual; RYAN J. FRYMAN,
 an individual; JUAN D. CONTRERAS, an
 individual; ALLEN J. PAVESE, an individual;
 BRANDON M. MEADS, an individual;
 FASHION SHOW MALL, LLC, a Nevada
 limited-liability company; UNIVERSAL
 PROTECTION SERVICE, LLC, a Nevada
 limited-liability company; ANDREW
 ANTONIO, an individual, EDWARDO
 AGUILAR, an individual, DOES I – V,
 individuals,

22 Defendants.

23 Plaintiff NEBYOU SOLOMON, by and through his attorneys of record, hereby
 24 replies in support of his Motion to Retax Costs pursuant to FRCP 54(d) and Local Rule LR
 25 54-12. This Reply is supported by the attached memorandum of points and authorities, as
 26 well as all papers and pleadings on file in this matter, and any argument this Court may
 27 require.

28 ///

1 DATED this 1st day of February, 2024.
2
3

/s/ *Leo S. Wolpert*

4 MARGARET A. MCLETCHIE, Nevada Bar No. 10931
5 PIETER M. O'LEARY, Nevada Bar No. 15297
6 LEO S. WOLPERT, Nevada Bar No. 12658
7

MCLETCHIE LAW

602 South Tenth St.

7 Las Vegas, Nevada 89101

8 Telephone: (702) 728-5300; Fax: (702) 425-8220

9 Email: maggie@nvlitigation.com

10 *Counsel for Plaintiff Nebyou Solomon*

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



ATTORNEYS AT LAW
602 SOUTH TENTH ST.
LAS VEGAS, NV 89101
(702)728-5300 (T) / (702)425-8220 (F)
WWW.NVLITIGATION.COM

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

While, as Defendants note in their Opposition, Mr. Solomon’s matter was adjudicated on summary judgment and the Clerk did not sustain his objections to the Bill of Costs (ECF No. 173, p. 2:12), that does not imply that Defendants’ requested costs should be imposed upon Mr. Solomon. Contrary to Defendants’ arguments, the instant motion is meritorious and this Court should re-tax costs downward.

II. LEGAL ARGUMENT

A. Summary Adjudication Does Not Preclude Re-Taxing of Costs.

Defendants argue that because the Court “granted summary judgment in favor of the LVMPD Defendants” and “found the Plaintiff failed to generate any issues of material fact on any of his claims” (ECF No. 173, p. 4:3-5) that costs should not be re-taxed downward against Mr. Solomon. However, courts in this district have not treated this as dispositive on a motion to re-tax.

For example, in *Miller v. Nye Cty.*, No. 2:19-cv-00601-JAD-DJA, 2022 U.S. Dist. LEXIS 138695 (D. Nev. Aug. 3, 2022), the Court granted summary judgment in favor of defendants—the police officer who shot plaintiff’s pet dog and the department that employed him—on plaintiff’s Section 1983 claims. *Id.* at *1. Nevertheless, the court re-taxed costs from \$4,528.00 to \$0.00. *Id.* at *2. In doing so, the court rejected defendants’ implication—similar to Defendants’ implication here (*see* ECF No. 173, p. 4:1-3)—that “the lawsuit was brought in bad faith based on the sole fact that [plaintiff] lost at the summary-judgment stage.” *Id.* at *5. The court further noted that while plaintiff lost at summary judgment, “there is no indication that this was a frivolous lawsuit or that it was brought in bad faith” where, as here, there was “no indication that [plaintiff’s] discovery efforts were made to harass or incur unnecessary costs—the docket contain[ed] no mention of discovery disputes or sanctionable conduct, and defendants [did] not cite a single instance of discovery abuse to support their statements.” *Id.* at *5-6. Likewise here, Defendants cannot point to any

1 discovery disputes or sanctionable conduct on the part of Mr. Solomon or his counsel. Thus,
 2 re-taxing costs downward is appropriate.

3 **B. This Matter Is of Significant Public Importance.**

4 Defendants argue that “when the case is stripped to its core, it is not one that deals
 5 with an issue of substantial public importance” but rather a case that “involved criminal
 6 defiance by the Plaintiff, masquerading as a First Amendment case.” (ECF No. 157, p. 4:13-
 7 16.) While Mr. Solomon objects to this mischaracterization of the matter, the “public interest
 8 in allowing individuals to sue for perceived abuses of police power cannot be understated.”
 9 *Miller*, 2022 U.S. Dist. LEXIS 138695, *3. This is especially true in the context of the First
 10 Amendment, which, as a fundamental principle, protects people’s “access to places where
 11 they can speak and listen, and then, after reflection, speak and listen once more” and holds
 12 public forums as “essential venues for public gatherings to celebrate some views, to protest
 13 others, or simply to learn and inquire.” *Packingham v. North Carolina*, 582 U.S. 98, 104,
 14 137 S. Ct. 1730, 1735 (2017). It is further true in the context of recording video in public:
 15 the issue of whether police may prohibit civilians from recording public events has been
 16 repeatedly litigated—and generally answered in the negative. See *Bennett-Martin v.*
 17 *Plasencia*, 804 F. App’x 560, 563 (9th Cir. 2020) (Christen, J. concurring) (citing *Askins v.*
 18 *U.S. Dep’t of Homeland Sec.*, 899 F.3d 1035, 1044 (9th Cir. 2018) and *Fordyce v. City of*
 19 *Seattle*, 55 F.3d 436, 439 (9th Cir. 1995)) (noting that the Ninth Circuit “repeatedly held that
 20 the First Amendment protects an individual’s right to photograph and record matters of
 21 public interest … including activities of police officers”). Thus, this factor weighs in favor
 22 of a downward re-taxing of costs.

23 **C. The Issues in this Matter Were Close and Difficult.**

24 Defendants argue that even though “the Court determined, as a matter of first
 25 impression, that the sidewalk on Fashion Show Drive was a public forum, none of the other
 26 issues decided in favor of the LVMPD Defendants could be considered close or difficult.” (ECF
 27 No. 173, p. 4:22-24.) This alone demonstrates the closeness of the issues at hand—had the Court
 28 determined that the sidewalk at issue was not a public forum, the Court would not have had to

1 engage in any analysis regarding whether time, place and manner of the restrictions on Mr.
 2 Solomon's First Amendment rights were reasonable. Thus, this factor weighs in favor of re-
 3 taxing costs downward.

4 **D. Taxing Costs Against Mr. Solomon Will Have a Chilling Effect on Future**

5 **Civil Rights Actions.**

6 Defendants correctly note that "subsequent to the filing of the instant case, *Plaintiff*
 7 filed another § 1983 lawsuit against LVMPD, which included allegations that his First, Fourth
 8 and Fourteenth Amendment rights were violated." (ECF No. 173, p. 5:12-15 (citing *Solomon v.*
 9 *LVMPD, et al.*, Case No. 2:22-cv-00847, ECF No. 1).) However, Mr. Solomon's allegations that
 10 a separate group of Metro officers violated his constitutional rights in a different 2020 incident
 11 are not relevant to whether the imposition of costs in this matter will chill future civil rights
 12 litigants. As reflected in Defendants' Opposition, Mr. Solomon filed his complaint in that matter
 13 on May 27, 2022. Yet, summary judgment was not granted in the instant matter until November
 14 9, 2023 (ECF No. 156) and Defendants' bill of costs was not submitted until November 22, 2023.
 15 (ECF No. 158.) Thus, Mr. Solomon is a "current litigant" rather than a "future litigant" and
 16 his attempt to seek redress for violations of his constitutional rights has no bearing on whether
 17 imposing costs would have a chilling effect.

18 Just as the *Miller* court did, this Court should hold that "permitting these costs
 19 would have a chilling effect on civil-rights litigants seeking to vindicate their rights in
 20 potentially meritorious suits." *Miller*, 2022 U.S. Dist. LEXIS 138695, *4. As the Ninth
 21 Circuit stated, "[w]ithout civil rights litigants who are willing to test the boundaries of our
 22 laws, we would not have made much of the progress that has occurred in this nation since
 23 *Brown v. Board of Education.*" *Stanley v. Univ. of S. Cal.*, 178 F.3d 1069, 1080 (9th Cir.
 24 1999). Here, although the "boundaries of the law" were not sufficiently expanded for Mr.
 25 Solomon to survive summary judgment in this matter, future litigants should not be dissuaded
 26 by the prospect of paying Defendants' costs from further testing (and having courts further
 27 define) those boundaries in similar, potentially meritorious matters. Thus, the costs imposed
 28 on Mr. Solomon should be re-taxed downward or vacated.

1 **E. Indigency is Not Required for this Court to Re-Tax Costs**

2 While Defendants correctly note that Mr. Solomon is not indigent (ECF No. 173,
 3 p. 5:16), “a plaintiff need not be utterly indigent to merit some relief from taxation of costs”
 4 in civil rights cases. *Coulter v. Newmont Gold Co.*, 873 F. Supp. 394, 397 (D. Nev. 1994)
 5 (citing *Braxton v. United Parcel Service, Inc.*, 148 F.R.D. 527, 528 n. 2 & 529 (E.D. Pa.
 6 1993)); *see also Miller*, 2022 U.S. Dist. LEXIS 138695, *4 (“indigence is not required for a
 7 plaintiff’s limited financial resources to warrant re-taxing costs”).

8 Here, Mr. Solomon’s limited financial resources warrant re-taxing of costs, even if
 9 Mr. Solomon is not indigent. As noted in Mr. Solomon’s declaration, payment of these costs
 10 will negatively impact his ability to meet his financial responsibilities to himself and his
 11 young son. That is enough to demonstrate that this Court should re-tax costs downward.

12 **F. There Is a Vast Economic Disparity Between Mr. Solomon and**
 13 **Defendants.**

14 Courts have declined to award costs to a prevailing defendant where the defendant
 15 has significantly larger financial resources than an individual plaintiff. *See Miller*, 2022 U.S.
 16 Dist. LEXIS 138695, *5 (“the economic disparities between a county government and an
 17 individual residing in that county are obvious”); *Coulter*, 873 F. Supp. at 397; *Reagan v.*
 18 *Bankers Trust Co.*, 863 F. Supp. 1511, 1521 (D. Utah 1994) (economic disparity between the
 19 parties can be considered); *Ezold v. Wolf, Block, Schorr and Solis-Cohen*, 157 F.R.D. 13
 20 (E.D.Pa.1994) (same); *Schaulis v. CTB/McGraw-Hill, Inc.*, 496 F. Supp. 666, 679-80
 21 (N.D.Cal.1980); *County of Suffolk v. Secretary of the Interior*, 76 F.R.D. 469
 22 (E.D.N.Y.1977); *Maldonado v. Parasole*, 66 F.R.D. 388, 390 (S.D.N.Y. 1975); *Martin v.*
 23 *Frontier Fed. Sav. & Loan Ass’n*, 510 F. Supp. 1062, 1069 (W.D. Okla. 1981) (“The plaintiff
 24 in this case is not indigent and the defendant is not a major corporate entity, but the Court
 25 views the disparity in economic status to be sufficient to warrant the denial of costs to the
 26 defendant in view of all other circumstances.”).

27 As noted in the Motion, Mr. Solomon has limited financial resources, while
 28 Defendants are one of the largest police departments in the United States (and its officers,

1 who are presumably indemnified by Metro). Thus, it is reasonable to conclude that
 2 Defendants “will not be financially crippled by a failure to award full costs in this case.”
 3 *Coulter*, 873 F. Supp. at 397. Mr. Solomon, as demonstrated in his declaration, will be
 4 severely impacted if full costs are awarded. Thus, this Court should exercise its discretion to
 5 re-tax the costs downward in this case.

6 **G. Defendants Are Not Entitled to Costs Under State Law.**

7 Defendants argue that under “NRS 18.020(3), the prevailing party in an action
 8 “where the plaintiff seeks to recover more than \$2,500” is entitled to recover his or her costs
 9 “against any adverse party against whom judgment is rendered.” (ECF No. 173, p. 6:20-22.)
 10 Further, Defendants argue that the only basis for re-taxed costs under Nevada law is
 11 reasonableness. (*Id.*, p. 7:3.) These arguments fall short, and costs cannot be imposed upon
 12 Mr. Solomon based on Nevada law.

13 From the outset, the LVMPD Defendants were not “adverse parties” regarding Mr.
 14 Solomon’s state law claim for negligent training. Indeed, this claim was not brought against
 15 the LVMPD Defendants to begin with—only against the Fashion Show Mall and Universal
 16 Protection Service Defendants. (ECF No. 57, ¶¶ 142-147.) Further, it was dismissed by
 17 stipulation prior to the conclusion of discovery. (*See* ECF No. 100.) For these obvious
 18 reasons, this claim was not briefed in Defendants’ Motion for Summary Judgment (ECF No.
 19 118) and the Court did not evaluate these irrelevant claims in its Order granting summary
 20 judgment. (ECF No. 156.)

21 Thus, it is entirely disingenuous for Defendants to claim that they accrued any costs
 22 litigating against Mr. Solomon’s lone state tort claim for negligent training, which, again,
 23 they were not adverse¹ to. This wholly undermines Defendants’ contention that they are
 24 entitled to any costs they allegedly incurred in litigating Mr. Solomon’s state tort claim; after
 25 all, it is tautologically unreasonable to defend claims brought against different defendants.
 26 Defendants cannot demonstrate that any of the costs they incurred were in any way related

27 ¹ Black’s Law Dictionary, 2nd. Ed., defines “adverse” as “opposed; contrary; in resistance or
 28 **opposition to a claim**, application, or proceeding.” *See* <https://thelawdictionary.org/adverse/>
 (last accessed February 1, 2024) (emphasis added).

1 to defending against a claim not brought against them. *See N. Las Vegas Infrastructure Inv.*
 2 & Constr., Ltd. Liab. Co. v. City of N. Las Vegas, 525 P.3d 836, 842-43 (Nev. 2023) (district
 3 court did not abuse discretion in denying costs for videotaped depositions where requester
 4 did not use the video depositions at trial, did not explain why obtaining video depositions
 5 were necessary, and therefore “failed to demonstrate that its costs for videotaping certain
 6 depositions were necessarily incurred.”). Simply put, because Defendants did not prevail on
 7 any state law claims in this matter, nor could they have incurred reasonable expenses
 8 defending against another defendant’s previously dismissed claims, Defendants are not
 9 entitled to recover any costs under NRS 18.020.

10 **III. CONCLUSION**

11 For the reasons set forth above, Mr. Solomon respectfully requests that this Court
 12 re-tax Defendants’ costs in this matter to \$0.00, or alternatively reducing them by an amount
 13 the Court believes is appropriate.

14
 15 DATED this 1st day of February, 2024.

16 /s/ Leo S. Wolpert

17 MARGARET A. MCLETCHIE, Nevada Bar No. 10931

18 PIETER M. O’LEARY, Nevada Bar No. 15297

19 LEO S. WOLPERT, Nevada Bar No. 12658

MCLETCHIE LAW

602 South Tenth St.

Las Vegas, Nevada 89101

Telephone: (702) 728-5300; Fax: (702) 425-8220

Email: maggie@nvlitigation.com

Counsel for Plaintiff Nebyou Solomon